

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
ALBUQUERQUE DIVISION

UNITED STATES OF AMERICA,)	CASE NO: 1:17-CR-02558-MV
)	
Plaintiff,)	CRIMINAL
)	
vs.)	Albuquerque, New Mexico
)	
ARTHUR PERRAULT,)	Tuesday, September 25, 2018
)	
Defendant.)	(11:47 a.m. to 12:24 p.m.)

DETENTION HEARING

BEFORE THE HONORABLE KAREN B. MOLZEN,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 Albuquerque, NM; Tuesday, September 25, 2018; 11:47 a.m.

2 (Call to Order)

3 **THE COURT:** For Detention Hearing, *United States of*
4 *America versus Arthur Perrault* in 17-CR-2558-MV.

5 **MR. SULLIVAN:** Good morning, Your Honor. Sean
6 Sullivan and Holland Kastrin for the United States.

7 **THE COURT:** Thank you.

8 **MR. WINDER:** Good morning, Your Honor. Samuel Winder
9 on behalf of Mr. Arthur Perrault who is present.

10 **THE COURT:** All right. And we are here for a
11 Detention Hearing this morning. Are we going to be taking
12 evidence in this matter or proffer? How are we going to
13 proceed?

14 **MR. SULLIVAN:** Your Honor, the United States is
15 prepared to proceed by proffer.

16 **THE COURT:** All right. Will that work for you,
17 Mr. Winder?

18 **THE DEFENDANT:** I'm having trouble hearing you.

19 **THE COURT:** I was hoping that we would be able to use
20 -- do you have your hearing aid in today? Yeah. I was hoping
21 -- we have these headsets.

22 **THE DEFENDANT:** No, I can hear you now.

23 **THE COURT:** Oh, you can?

24 **THE DEFENDANT:** Yes. Yes. Fine.

25 **THE COURT:** Okay. Well, if at any time you cannot

1 hear me or hear Mr. Sullivan or Ms. Kastrin or Mr. Winder, you
2 let me know. Will you do that?

3 **THE DEFENDANT:** Certainly.

4 **THE COURT:** All right. Any objection to proceeding
5 by proffer?

6 **MR. WINDER:** No, Your Honor. No objection.

7 **THE COURT:** All right. Mr. Sullivan?

8 **MR. SULLIVAN:** Yes, Your Honor. Our position is that
9 the Defendant is a very serious flight risk or risk of
10 nonappearance and a danger to the community, and those risks
11 can't be mitigated by any conditions of pretrial release, no
12 matter how serious that they are.

13 As we played out for you in our written motion to
14 detain, the Defendant, over the course of more than 20 years,
15 abused numerous children in the State of New Mexico and even
16 before that --

17 **THE COURT:** Let me make sure -- can you hear
18 everything, Mr. Perrault?

19 **THE DEFENDANT:** Yes. Yes.

20 **THE COURT:** Okay.

21 **MR. SULLIVAN:** -- as a Catholic priest. Then when
22 the allegations became public for the first time in 1992, he
23 fled to Morocco where he remained until just last week when the
24 United States asked for an extradition-like proceeding. We
25 don't have an Extradition Treaty with Morocco, but we follow a

1 similar procedure. The country expelled him from their country
2 and the FBI picked him up and brought him back here.

3 So I'd like to address a few things in support of
4 detaining him here, understanding that Mr. Winder is going to
5 make his arguments on Mr. Perrault's behalf and also that
6 Pretrial Services in this case has recommended his release to
7 the halfway house with certain conditions.

8 **THE COURT:** Well, let me interject something.

9 **MR. SULLIVAN:** Yes.

10 **THE COURT:** Pretrial Services -- and, Mr. Winder,
11 you've reviewed this Pretrial Services report with
12 Mr. Perrault?

13 **MR. WINDER:** Yes, Your Honor.

14 **THE COURT:** Pretrial Services is not permitted to
15 look at a couple of things that I'm required to look at. One
16 of them is the weight of the evidence. The other is a
17 rebuttable presumption that Congress has created.

18 So, Mr. Perrault, based upon these charges, there is
19 -- Congress created a presumption that there are no conditions
20 for release that would be appropriate. Now, that's rebuttable
21 presumption, but I wanted to explain that that's something that
22 Pretrial Services cannot take into account when it's making its
23 recommendation. And I just wanted to make you aware of that.
24 Okay?

25 Go on ahead, Mr. Sullivan.

1 **MR. SULLIVAN:** Yes, Your Honor. I'm glad that we
2 brought that up. A lot of what I'm going to say, and I won't
3 be very long, is going to focus on some of those things like
4 the weight of the evidence and the presumption that applies
5 here.

6 As for the Defendant being a flight risk, Pretrial
7 Services properly found that he is a flight risk and you should
8 find that, too. Although they say there are conditions that
9 would mitigate the flight, we submit to you that there are not.
10 First of all, the Defendant fled from the United States when he
11 was facing allegations of abusing children as a Catholic
12 priest.

13 **THE COURT:** And let me hold on for a moment. For the
14 record, we've put on a headset that, hopefully, is amplifying
15 the sound. Does that make it easier for you to hear,
16 Mr. Perrault?

17 **THE DEFENDANT:** Perhaps.

18 **THE COURT:** Okay. If it doesn't, let me know. Go on
19 ahead, Mr. Sullivan.

20 **MR. SULLIVAN:** Your Honor, first, the Defendant went
21 to Canada, but he didn't stay there. He then moved on to
22 Morocco. He told Pretrial Services that the reason why he did
23 that is because the cost of living was less in Morocco. Well,
24 the cost of living is less in a lot of countries, including our
25 neighbor Mexico, for the most part. But Morocco is a very

1 advantageous place for someone like him to flee because it
2 doesn't have an Extradition Treaty with the United States.

3 And I don't want to go into all of the mechanisms we
4 had to do to get him back, but it's more difficult to get
5 someone back from a country where we don't have an Extradition
6 Treaty. And even though we can do it, in the eyes or the mind
7 of most people who flee, you can see why they would end up in a
8 place that does not have an Extradition Treaty.

9 The Defendant lived there for about 23 years. He
10 knew of the civil allegations at that time, including just a
11 couple of years ago he was directly advised that -- of a
12 default judgment or at least a pending proceeding against him
13 in the District Court here in New Mexico, the State District
14 Court. And rather than submit to that jurisdiction, he just
15 wrote a letter to Judge Denise Barela-Shepherd acknowledging
16 his awareness of the case, but he didn't surrender. He offered
17 some excuses and some reasons for why he wasn't answerable to
18 those charges, but he was aware and he didn't come back
19 voluntarily. He only came back in this case because the FBI
20 went and got him after he was expelled from the country.

21 On the flight back, the Defendant did have a
22 conversation after being advised of his Miranda Rights and
23 without asking for a lawyer, where he said, among other things,
24 that he maintains an apartment in Morocco and he's asked a
25 friend to look after that in contemplation of a possible return

1 in the future.

2 I'll also point out that when faced with the news
3 that the United States was seeking him to come back, he fought
4 that process and through the legal system of Morocco; he didn't
5 voluntarily come back.

6 Also, I'll point out that during the plane ride back
7 with the FBI Agents, the Defendant denied committing any acts
8 of child sexual abuse on Kirtland Air Force Base; however, in
9 general terms he did admit to touching children through their
10 clothing, engaging in oral sex and other things like that.

11 So, moving along, the Defendant also said that he has
12 one friend here in New Mexico. That's not a lot of community
13 support. We know who that person is. He's mentioned him by
14 name and the FBI's already interviewed him. He said he had no
15 family anywhere, much less in New Mexico or in the United
16 States.

17 And in terms of his flight risk, I think it's also
18 important to consider the nature of the crimes here and how
19 they involve manipulation and gaining someone's trust and then
20 exploiting that kind of trust. And there's a variety of
21 different opportunities for someone to do that if they're at
22 liberty in order to get to the place they want to go, whether
23 it's a safe place abroad or even in the United States because
24 not only are you considering whether he's a flight risk,
25 meaning he'd leave the jurisdiction, but also just his risk of

1 nonappearance and he could do that tucked away somewhere within
2 New Mexico as well. He's someone who's known to manipulate and
3 take advantage of people.

4 And also as to terms of flight risk, we can't just
5 assess Mr. Perrault and his age and his physical strength, but
6 what could he do to flee and to nonappear with the help of
7 others, which he could gain on the outside? He's a risk of
8 nonappearance locally as well as a risk of flight out of the
9 jurisdiction. So, for all of those reasons, he's a flight risk
10 that can't be mitigated.

11 As far as dangerousness --

12 **THE COURT:** Let me back you up for a second.

13 **MR. SULLIVAN:** Yes.

14 **THE COURT:** You said that he could get help from
15 others as far as risk of flight.

16 **MR. SULLIVAN:** Yes.

17 **THE COURT:** You indicated to me he only has one
18 friend in this District.

19 **MR. SULLIVAN:** He does at this time but, Your Honor,
20 if he were to be placed in a halfway house setting or something
21 like that, you know, somebody with his history of manipulating
22 people and earning their trust, perhaps he could do that with
23 fellow residents and then get them to assist him, people who
24 have privileges to go off the halfway house during the day for
25 work or school, or maybe family members.

1 While he has no one here, I think that speaks to his
2 community ties in light -- but I think he could, in the right
3 setting, try to curry favor with people who could help him in
4 an escape.

5 **THE COURT:** Okay.

6 **MR. SULLIVAN:** As far as his dangerousness, Pretrial
7 Services also found that he was dangerous to the community.
8 Although they suggest how that could be mitigated, we say that
9 it cannot be mitigated. For one thing, as you've mentioned,
10 the presumption of detention applies in this case to six of the
11 seven charges. But actually for all of the charges, they're
12 considered crimes of violence. So even the one where the
13 presumption of detention doesn't apply under 18 U.S.C. 3156,
14 you are allowed to consider and should consider, in assessing
15 whether he should be detained, that all of the crimes are
16 crimes of violence.

17 They didn't require physical force like other crimes
18 of violence, or physical strength, but they're considered
19 crimes of violence nonetheless.

20 The Defendant is more dangerous now, we submit, than
21 he was in 1992 when the last of these crimes occurred because
22 we're now living in the Internet age and that gives someone
23 access fairly easily to pornography and to child pornography.

24 At a halfway house, according to the proposed
25 restrictions from Pretrial Services, they wouldn't include

1 forbidding him to have a cellphone and even if they did, they
2 wouldn't prevent other residents from having a cellphone. And
3 that would allow him to get into cyberspace where he could do
4 harm similar to the harm he's done in the past; potentially
5 solicit a minor or something to that effect.

6 We should also in terms of dangerousness look back at
7 his life and -- and the Defendant in the late '60s was sent to
8 the Servants of the Paraclete in Jemez by another diocese in
9 America to be treated for instances of abusing children. They
10 found him after a certain period of time, not a long period of
11 time, to be cured or to be rehabilitated and asked him what he
12 wanted to do, and he said he wanted to go to Saint Pius High
13 School where he worked with children.

14 We have credible allegations in this case, credible
15 evidence that he abused children at Saint Pius, though so long
16 ago that the statute of limitations has lapsed. But then, this
17 pattern is followed when he goes to Morocco.

18 In fact, in his letter that he sent to Judge Barela-
19 Shepherd here in New Mexico, he said he was working at a school
20 in Morocco. So given the opportunity, again, he went back to
21 work with children.

22 Now, we haven't been able to do enough investigation
23 on the ground in Morocco to see if there are any allegations
24 against him there or if anyone has come forward. We need to
25 follow up with that. Keeping in mind that it's a different

1 culture and the way they look at things like child sex abuse
2 and, I'm sure, they find it as abhorrent as we do, but it's a
3 different culture and we have to approach an investigation like
4 that with those sensitivities.

5 **THE COURT:** Did I understand you to say there's no --
6 nothing that you're aware of as far as any similar charges in
7 Morocco?

8 **MR. SULLIVAN:** That's right. So I don't think we can
9 say that you should look less favorably on him because of
10 something that happened in Morocco; we have no such evidence.
11 But you also shouldn't look more favorably because we haven't
12 had an opportunity to investigate it, and especially if he's
13 working in a school and working with children, we know
14 historically that sometimes those things -- people don't come
15 forward and they come forward much later. So I think that's
16 really a neutral factor in this case, but certainly not in his
17 favor.

18 **THE COURT:** Wasn't his degree in -- his degree is in
19 education and that he had been an educator throughout his time
20 here in New Mexico, as well?

21 **MR. SULLIVAN:** He did that part of the time. Yes,
22 Your Honor, and he also worked as a parish priest.

23 **THE COURT:** Okay.

24 **MR. SULLIVAN:** But if -- kind of the same thing here,
25 it took more than 20 years for people to come forward and

1 accuse Father Perrault of abuse. Maybe the same thing would
2 happen there. I don't think we should look at that either way.

3 **THE COURT:** And on another note, did the alleged
4 victim receive notice of today's hearing?

5 **MR. SULLIVAN:** He did. Yes.

6 **THE COURT:** All right.

7 **MR. SULLIVAN:** As well as many other people who --
8 whose abuse isn't charged in the indictment, and they've also
9 joined us here today.

10 We have evidence against dozens of victims actually
11 and, honestly, a jail setting is the best place for the
12 Defendant to be. One, because it's a secure facility, there
13 are people there that are trained in law enforcement and being
14 armed, they can protect other people from Perrault, the
15 Defendant, as well as they can protect him from others. We
16 know in a situation like this, with crimes of this nature, that
17 the security of the person who is in the facility is also very
18 important and they have the expertise and the security in order
19 to do that.

20 Also, the jail can meet his medical needs. Since
21 back before the FBI went to pick up Perrault in Morocco, we
22 have been coordinating with doctors over there to make sure
23 that we had medicines and an accurate assessment of his health,
24 and that process is already started with the U.S. Marshals
25 Service going -- and the FBI, and FBI doctors, going back to

1 last week, and the best way for the continuity of care to
2 continue is in a jail setting where his needs can be met,
3 rather than outsourcing that to other people in the community.
4 That's not appropriate here.

5 So, based on all of those reasons, he's a serious
6 flight risk, a serious danger to the community, and none of
7 that can be mitigated.

8 And as I close, one more thing, Your Honor. There is
9 a case in the Tenth Circuit that's very closely on point and
10 it's called United States v. Frater (phonetic), and I brought
11 copies of the Tenth Circuit opinion which I'll furnish to
12 Mr. Winder and also hand up to you.

13 **THE COURT:** Thank you.

14 **MR. SULLIVAN:** And you'll see in that case the Tenth
15 Circuit sound -- found that the District Court properly
16 remanded the Defendant pending trial.

17 That was a case where it was a drug crime. The
18 Defendant fled first to Spain and then Cuba, and then United
19 Arab Emirates and, finally, he was tracked down at London
20 Heathrow Airport, but his crimes were drug crimes where a
21 presumption of detention applied, and he was extradited back to
22 the United States. The Court specifically noted a few things,
23 like his lack of ties to the United States, his history of
24 international travel, and his residence abroad as reasons why
25 the District Court properly detained him. All of those things

1 apply here.

2 This is a presumption case, presumption of detention.
3 It involves an extradition and the same things apply to the
4 Defendant in terms of his lack of ties to the United States,
5 his travel abroad and --

6 **THE COURT:** You indicated --

7 **MR. SULLIVAN:** -- his residence abroad.

8 **THE COURT:** -- that -- I think you indicated that
9 Morocco had expelled him?

10 **MR. SULLIVAN:** That's right.

11 **THE COURT:** So there's no indication that Morocco
12 would accept him back even if he tried to go there with --

13 **MR. SULLIVAN:** I think that's correct. I mean, if he
14 tried to do a border crossing into Morocco, he would be
15 disallowed into Morocco. That doesn't mean that there aren't
16 other countries that he could go to that offer similarly
17 favorable conditions.

18 **THE COURT:** But now have -- I think it's also my
19 understanding that his passport was confiscated when he was
20 brought back to the United States?

21 **MR. SULLIVAN:** That's correct. And he does not have
22 the passport which might make entry difficult in some
23 countries, but we also have people who flee particularly to
24 Mexico and they're able to get access to that country without a
25 passport. So the risks of him fleeing the United States still

1 exist.

2 Also, just in his head, while he's been expelled from
3 Morocco to face these charges, what we know from what he told
4 the Agents on the plane is he does maintain a residence over
5 there and he's asked somebody to look after it. So, from his
6 frame of mind, it seems that he's at least contemplating
7 possibly being able to get away from these charges here and
8 return there in the future.

9 **THE COURT:** All right. Thank you, Mr. Sullivan.
10 Mr. Winder?

11 **MR. WINDER:** May it please the Court.

12 Your Honor, before I go any further, and I will make
13 reference to it again, is that I ask Your Honor to take
14 judicial notice of the Pretrial Service's report, and I don't
15 have to go as far as Kansas to bring an issue that's close to
16 this District. And I gave Mr. Sullivan and Ms. Kastrin an
17 indictment and the Clerk Minutes and an order allowing a -- one
18 of my former clients, go at least to the halfway house. And
19 they are very serious charges.

20 My client -- I won't mention his name; he was about
21 72-years-old, he was charged with a minimum-mandatory 30 years
22 for allegedly sexually abusing his granddaughter. He had
23 severe health issues and Your Honor released him to the custody
24 of a halfway house, notwithstanding whatever presumption there
25 might be in law. So, there is precedence, Your Honor.

1 I've not received any discovery in this case. The
2 only discovery that I've received is a two-page letter, which
3 -- actually, it was maybe three or four pages that my client
4 has sent to Judge Denise Barela-Shepherd. I'm not aware of --
5 I've not received any -- I know at some point I will get the
6 discovery with regard to any statements that my client made,
7 but I have not received anything with regard -- any statements
8 with regard to what he might have said on the flight back to
9 the United States.

10 With reference to flight risk, my client, he's
11 82-years-old; he has no money. I am not sure exactly how he
12 would make his way back to Morocco or to Mexico.

13 As everyone is aware, this is a case which has been
14 in the media and it would be very difficult for my client to
15 flee this jurisdiction. He doesn't have a passport. He's
16 relinquished his passport. And with regard to the halfway
17 house, I don't know if Mr. Sullivan has ever gone to a halfway
18 house. I've been to halfway house hundreds of times and I am
19 aware of the protocols that are in place at the halfway house
20 with regard to the residents that are there. There are strict
21 conditions which Mr. Perrault would have to comply with, if
22 Your Honor follows the recommendation of Pretrial Services.
23 And I provided those to him and he's aware that if there should
24 be any violation whatsoever of any condition, that he would be
25 remanded to the custody of the U.S. Marshal.

1 Now, Mr. Sullivan has indicated that he believes that
2 the best place for Mr. Perrault to be is in jail. Yet, I don't
3 know if Mr. Sullivan has ever gone to the Sandoval County
4 Detention Center or any other facilities in this District.
5 They're not very safe facilities. There are fights that occur
6 all the time. There are individuals that know people's cases
7 and there are fights. It's not beyond the realm of
8 possibilities for an inmate, they watch the news, to learn who
9 Mr. Perrault is, and there are probably some severe
10 consequences that could flow from that. So, I respectfully
11 disagree with Mr. Sullivan that the best place for Mr. Perrault
12 to be is in jail.

13 He has severe health issues. He had a stroke several
14 years ago, and if Your Honor is inclined to release him or to
15 remand him back to custody of the U.S. Marshal, at some point,
16 I'll be approaching the AUSA with regards to Sandoval County.
17 That is not a very good place for medical care. The place that
18 would be proper is probably the Cibola Correctional Center.
19 They have better healthcare facilities there than they do in
20 Sandoval County -- and if the -- so --

21 **THE COURT:** That's an issue that is best raised with
22 the Marshal.

23 **MR. WINDER:** I'll raise it with the U.S. Marshal at
24 some point, Your Honor. Thank you, Your Honor.

25 Now, with regard to getting back to whether he is a

1 flight risk, he understands the severe consequences that would
2 flow from going to Morocco. He doesn't have -- with regard to
3 this issue of getting help from others, he doesn't have any
4 family. He doesn't have any relatives in the State of Mexico
5 or, frankly, in this country. So, I find it very difficult to
6 see how Mr. Perrault would leave. He's not using a cane today,
7 but he uses a cane. His eyesight is not the greatest. He
8 can't hear very well. He has severe health issues.

9 I won't outline all the issues in the Pretrial
10 Service's report that outlines his health conditions. He needs
11 his medication. He needs blood thinner medication. And so, he
12 would be putting his health at severe risk if, hypothetically
13 speaking, he would make his way to Mexico or to Canada.

14 Your Honor, with regard to the issue of danger to the
15 community, I'll go back to what I had mentioned earlier. There
16 is precedence for Your Honor releasing individuals that are
17 charged with crimes like this to be released to the custody of
18 the halfway house.

19 And I know, obviously, there's an indictment that's
20 been placed against my client. And, again, I don't have the
21 discovery in this case. I'll get them in a couple of weeks --
22 get the discovery. But to my knowledge, all the claims that
23 Mr. Sullivan has raised are civil claims. I have not seen any
24 criminal claims that have been raised with regard to any of the
25 other alleged victims. So, for him to point to the other

1 claims, they're civil; they're not criminal in nature.

2 So, I believe that his arguments with regard to him
3 being a danger to the community, looking at those other crimes,
4 is inappropriate.

5 Your Honor, with regard to the matter again with the
6 issues involving statements that he made, I've not received any
7 copies of the statements he made. I have no discovery, but I
8 will point out for the record that it was my understanding that
9 Mr. Sullivan was considering presenting this letter as evidence
10 to the Court.

11 But I'll proffer to the Court what's set forth in
12 this letter is that he taught 1,800 youngsters for 23 years.
13 There was a -- somewhat of an investigation that flowed and
14 there was no allegations or rumors against him doing anything
15 to those children over -- any of those children that he taught
16 for 23 years. And Mr. Sullivan --

17 **THE COURT:** And you're referring to his --

18 **MR. WINDER:** -- a letter to --

19 **THE COURT:** -- letter to Judge Barela-Shepherd.

20 **MR. WINDER:** Barela-Shepherd, yes, Your Honor. And
21 so, Mr. Sullivan indicates that they will conduct their
22 investigation in Morocco; I may need to do the same thing as
23 well, but at least the letter that they presented to me
24 indicates that there is nothing that was reported over a
25 23-year-period teaching 1,800 youngsters, Your Honor.

1 So, Your Honor, I believe that there are reasonable
2 conditions that could be fashioned to protect the community.
3 With regard to the allegation in this case, it's my
4 understanding that there was a source in 2016 that presented
5 this to the U.S. Attorney's Office or to the FBI.

6 My experience as a Federal Prosecutor and a Defense
7 Attorney, normally in cases, if there is a crime that occurs,
8 it's immediately reported to the FBI or to the District
9 Attorney's Office. That didn't happen in this case. It took
10 almost 30 years after a civil lawsuit has been filed for this
11 issue to be brought to the attention of law enforcement.

12 The case that I had mentioned before involving a
13 former client, the alleged victim was 11-years-old. It's my
14 understanding that the alleged victim in this case is an adult.

15 My client would be at the halfway house. He'll be on
16 GPS monitoring. If he should leave the facility for other than
17 healthcare -- he can't work, that's one of the issues that --
18 he's not able to work. But he -- I'm confident that Pretrial
19 Services would contact me, and I would address the situation.
20 I spend a lot of times with my clients and with this -- with
21 Mr. Perrault, I will go to La Posada once a week to make sure
22 that things are going well, that he's having -- that his health
23 concerns are addressed and, sadly, for many of my clients, we
24 can't see them once a week. We see them two or three times a
25 -- maybe once a month. But it's difficult for us to keep in

1 contact with our clients with regard to their health needs.
2 And I believe that I would be able to have more of a chance to
3 make sure everything is appropriate if Mr. Perrault is at the
4 halfway house.

5 So, again, Your Honor, I respectfully ask that you
6 take judicial notice of the Pretrial Service's report and there
7 are strict conditions that are in place. My former client
8 never violated any conditions when he was -- when he pled
9 guilty, he was remanded to the custody of the U.S. Marshals and
10 his healthcare needs were taken care of. But I can tell you in
11 the case I've made reference to, there were concerns I had
12 often when I visited with him at the Santa Fe Adult Detention
13 Center with regard to his healthcare needs. And those are the
14 concerns I have, Your Honor.

15 And so, I would ask that you accept the
16 recommendations of Pretrial Services in this matter and release
17 Mr. Perrault to the third-party custody of La Posada Halfway
18 House with the strict conditions that are set forth in the
19 Pretrial Service's report including the GPS monitoring, the
20 home incarceration component. Thank you, Your Honor.

21 **THE COURT:** Thank you. Your response, sir?

22 **MR. SULLIVAN:** Yes, Your Honor. First of all, it's
23 widely known that allegations of child sexual abuse often would
24 come years after the fact. Children are vulnerable. They can
25 be manipulated and scared into keeping quiet. This case is no

1 different.

2 As far as the case that Mr. Winder is talking about,
3 the Defendant's name is "Pete" and he talks about that
4 supporting his argument for why the Defendant should be
5 released. That case has nothing in common with this case. The
6 Defendant in that case was an Indian who lived on the Indian
7 place in New Mexico. I mean --

8 **THE COURT:** If I recall, there was significant family
9 ties.

10 **MR. SULLIVAN:** -- as there would be in a tribal
11 community. That's the opposite of someone who's been living
12 abroad for more than 20 years and is originally from the east
13 coast of the United States.

14 I'll also point out that we have some cases we can
15 furnish for the Court, including one of them being United
16 States vs. Bonilla (phonetic), which is an opinion from the
17 Second Circuit 388 F. App'x 78, from the Second Circuit in
18 2010. It says that the fact Defendants have involuntarily
19 forfeited their passports does not serve to eviscerate the risk
20 of flight. And *Bonilla* cites to some other cases for that
21 proposition.

22 The evidence here is insufficient to overcome the
23 presumption of detention. As far as health issues, the
24 Defendant has been in the custody of Moroccan law enforcement
25 for a year and they've been able to adequately address his

1 health issues and concerns. Many people who are sick and
2 elderly and have infirmities and conditions close to what the
3 Defendant have are managed by the Marshal Service and managed
4 by the Bureau of Prisons.

5 And one last thing on the issue of GPS monitoring at
6 the halfway house, there's an opinion that we cite in our
7 motion to detain coming from Judge Browning that recognizes
8 that because of our close proximity to the Mexican border, even
9 when someone is in the halfway house with GPS monitoring, still
10 because they're so close to Mexico, they still pose a flight
11 risk and that doesn't entirely mitigate it.

12 So, for all of those reasons, it's the Defendant's
13 burden to rebut the presumption that applies here. He hasn't
14 put forth enough evidence to overcome it --

15 **THE COURT:** Well, you bear -- the Government bears
16 the ultimate burden of proof even when we have that presumption
17 there.

18 **MR. SULLIVAN:** That's right.

19 **THE COURT:** And as far as flight risk, it's by a
20 preponderance of the evidence. When you talked about
21 Mr. Perrault relocating to Morocco in 1992, were there any
22 allegations at that time?

23 **MR. SULLIVAN:** There were, Your Honor.

24 **THE COURT:** And could you explain that more for me
25 because it seems to me that figures into your analysis with

1 regard that your allegation that he left in order to avoid any
2 kind of consequences.

3 **MR. SULLIVAN:** That's right. Some of them were
4 reported in the news. News reporters were going to
5 Saint Bernadette's where he was the Pastor and asking about him
6 and asking if he had been involved in abusing children, as well
7 as lawsuits being filed at that time against him and against
8 the Archdiocese. And so, it was public at that time.

9 **THE COURT:** Okay.

10 **MR. SULLIVAN:** That's what prompted him to leave.
11 And then, very quickly, after that, the Archbishop, learning of
12 these allegations, suspended his faculties to be a priest
13 within the Archdiocese and ordered him to continue to be
14 observant, but to do that privately and not to interact with
15 any parishioners.

16 **THE COURT:** Okay. Thank you, sir.

17 **MR. WINDER:** May I respond briefly, Your Honor?

18 **THE COURT:** You may.

19 **MR. WINDER:** Your Honor, thank you. Mr. Perrault
20 informed me that he was at the infirmary all the time that he
21 was in custody in Morocco. And I know the case Benson Pete
22 (phonetic) very well, and for the record, he did not have
23 family ties in New Mexico. His family lived in the State of
24 Arizona on the reservation, which is about five or six hours
25 from Albuquerque.

1 With regard to, again, I'm not hanging -- my
2 arguments do not hang upon the case that I made reference to.
3 What I was merely trying to show is there has been at least,
4 and I'm sure there's been other instances where individuals
5 that are accused of drug crimes, violent crimes, have been
6 released to the custody of the halfway house. I was merely
7 presenting one that I actually handled that was similar in
8 nature with regards -- because of the age and the health issues
9 with regard to my client -- former client. And in that case,
10 there was a individual that was young that -- and it was a case
11 that was reported soon thereafter after the incident allegedly
12 occurred.

13 In this case, Your Honor, this is a case that's 30
14 years old and, obviously, we're not certain as to where this
15 matter will proceed but, ultimately, this case is going to be a
16 matter of what the victim says and what Mr. Perrault says.
17 There's no corroborating evidence that I'm aware of with regard
18 to the allegations set forth in the indictment. At some point
19 I believe I'll get some, but right now, I don't have any of the
20 corroborating evidence with regard to any of the matters.
21 Thank you, Your Honor.

22 **THE COURT:** All right.

23 One of the biggest concerns for me was that he left
24 when these allegations were first made. And as far as an
25 indication of a risk of flight, the actual evasion or leaving

1 to me is a very strong indication of that factor. Especially
2 given now with the probable cause determination finding by the
3 Grand Jury, he is subject to a -- lengthy period of
4 incarceration if he's convicted. And even though he doesn't
5 have any criminal history, we do have these allegations from a
6 long time ago. The fact that even if they were delayed
7 reporting, as Mr. Sullivan indicated, that's not uncommon in
8 these kinds of offenses.

9 He has no employment. He doesn't have any real
10 significant, meaning ties here to this community or to the
11 United States; it's not just the District of New Mexico.

12 But the fact that he left and went to a country that
13 did not have an Extradition Treaty, that plays into my
14 analysis.

15 I do believe that the Government has demonstrated by
16 a preponderance of the evidence that there are no combination
17 of conditions for release that would adequately assure his
18 appearance as required. So, to my mind, that's the stronger of
19 the arguments.

20 As far as danger to the community, I do believe he is
21 a danger to the community, but that less a factor for me. I
22 believe the Government has shown that by clear and convincing
23 evidence, given this charge and the evidence that I've received
24 in association with this. But, primarily, I find him to be a
25 flight risk -- even given his age, even given those medical

1 conditions, I'm cognizant of what Mr. Sullivan said. He's a
2 very charming man and it does give me concern.

3 So, I'm going to remand him to the custody of the
4 United States Marshal until the time of trial.

5 Now, please -- it gives me no pleasure to send anyone
6 -- and I want everybody to understand that there's an act
7 called The Bail Reform Act, and I'm required to place the
8 Defendant in the least restrictive conditions that I can place
9 someone in. In this case, I believe the Government has met its
10 burden and that that is my finding.

11 Now, Mr. Perrault, if you disagree with this,
12 Mr. Winder is familiar with this process; you are entitled to a
13 de novo hearing in front of the District Judge in this case. I
14 believe that's Judge Vazquez. Is that correct?

15 **MR. SULLIVAN:** Yes, Your Honor.

16 **THE COURT:** And that's the route that I would prefer
17 you take at this point rather than asking for reconsideration.
18 I've given it a lot of thought, Mr. Winder.

19 **MR. WINDER:** Thank you, Your Honor. And I've
20 discussed this with Mr. Sullivan and Ms. Kastrin, and we will
21 be, most likely, appealing this to Judge Vazquez. Thank you.

22 **THE COURT:** And if -- I -- and rather than slow it
23 down by me issuing a written opinion, especially given that
24 it's going to go on a de novo review, I think it's better that
25 I just -- you have my oral findings on the record and those

1 that I'll make in my order of detention, but I'm not going to
2 do an opinion. All right?

3 **MR. WINDER:** Thank you, Your Honor.

4 **THE COURT:** All right. Thank you, Mr. Perrault.
5 We'll be in recess.

6 **MS. KASTRIN:** Thank you, Your Honor. May we be
7 excused?

8 **THE COURT:** You may.

9 **(This proceeding was adjourned at 12:24 p.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", is positioned above a horizontal line.

Signed

September 30, 2018

Dated

TONI HUDSON, TRANSCRIBER